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SUBJECT: TOUGHER MEXICO ANTITRUST LAW IN THE WORKS

¶1. (SBU) SUMMARY: While Mexico has one of Latin America's most open economies, its tenacious monopolies and weak regulation reduce consumer choice, boost the cost of doing business, and hamper Mexico's economic growth. Last month, influential PAN Senator Santiago Creel introduced a bill to amend Mexico's Federal Economic Competition Law. The legislation attempts to strengthen Mexico's anti-trust commission by raising penalties against monopolistic behavior to international standards. Fifteen Senators co-sponsored the bill, which appears at this point to enjoy cross-party support. However, the legislative session ended April 30, and with Lower House elections scheduled for July, no action on this initiative is likely until the Senate reconvenes in September. END SUMMARY.

¶2. (U) In the early 1990's Mexico initiated a process of trade liberalization and regulatory improvement which was designed to modernize the economy, improve competitive conditions, and facilitate Mexico's insertion into the global economy. Part of this modernization effort was the Federal Economic Competition Law (FECL) in 1993, which created the Federal Competition Commission (CFC), Mexico's anti-trust commission. In 2006, Mexico amended the FECL to give the CFC better operative tools to regulate market concentration and anticompetitive behavior in both the private and public sectors. According to Angel Lopez Hoher, the head of CFC information committee, the initiative submitted last month to amend the FECL is the necessary next step in the evolution of Mexico's anti-trust enforcement efforts.

¶3. (U) During his 2006 presidential campaign, President Calderon promised to eliminate monopolies and oligopolies and increase competition in Mexico, but it remains to be seen whether the shrinking economy, the fight against drug syndicates, and an anticipated tight presidential race in 2012 will allow him fulfill this pledge. In addition to giving more teeth to the CFC, observers note that to increase competition even further, lawmakers should also armor the weak Profeco (Office for the Protection of Consumer) and Condusef (National Commission for the Protection of Financial Services' Users).

¶4. (SBU) Senator Creel, a strong advocate of competition in Mexico since the monopolistic television network Televisa failed to back his presidential aspirations against Calderon in 2006, worked closely with CFC's experts to shape the legislation. Creel views strengthening competition as an important measure to stimulate Mexico's domestic market, especially in an economic crisis. Creel's message to his colleagues when he introduced the bill - that competition benefits consumers and makes economies more efficient, that monopolies are one of the reasons that Mexico is not growing, that they need to look beyond the current crisis and create the right environment for the future growth of Mexico, and that Mexico must adhere to international standards - was very effective, according to the press.

¶5. (U) The bill proposes to raise penalties for monopolistic

behavior. Currently, penalties are established using the minimum wage as a base, but the bill proposes using the international standard and basing the formula on annual sales, taking into consideration their size, capacity and particularly the damage inflicted on the consumers and the economy. Currently the maximum penalty in Mexico is 50 million pesos (4 million USD), but the bill proposes to raise the fines in Mexico to up to ten percent of a company's annual sales. (Note: So long as the business is able to pay the fine without going under. End note.) Companies would be fined for activities in two categories - collusion, such as in fixing prices, public biddings or auctions, boycotting against a third competitor, and conducting illegal activities; or abuse of dominance, such as impeding market access to other competitors, or imposing unilateral conditions in sales or purchases. If the same company is found guilty twice of such monopolistic behavior, sanctions will be doubled and the dismantling or sale of assets will be expedited. Some cases of collusion will be considered serious crimes, and may include jail time.

PROSPECTS FOR BILL'S PASSAGE

¶6. (SBU) The bill was submitted roughly two weeks before the legislative session ended on April 30, and was superceded by several security initiatives that the Calderon administration pushed hard on the Senate to complete. No extraordinary sessions of Congress are presently anticipated before the Lower House elections in July, which means the bill will likely be taken up again in September when the Senate reconvenes. The bill will first be considered by the Senate's Trade and Industrial Development Committee. The Committee's Chairman, Senator Eloy Cantu, is a PRI member from the

MEXICO 00001307 002 OF 002

State of Nuevo Leon, and is both pragmatic and business-friendly. The prospects for passage out of his committee are good. Lopez is optimistic that although the final law will likely be watered down, it will still be an effective tool in CFC's arsenal to combat Mexico's oligopolies.

¶7. (SBU) Even without effective penalties, the CFC has had a high profile. Led by a politically fearless Eduardo Perez Motta and with the few legal tools it has presently, the CFC has contributed in these past years to stimulate competition. Last year, the anti-trust commission conducted an investigation and concluded that all mobile telephone companies were dominant. It is also investigating other telecommunication markets to determine whether monopolistic practices exist and issue the corresponding asymmetric regulations for dominant players. Perez Motta has publicly condemned collusion and unfair practices in the banking sector and more recently in the cement and construction sectors. Along with the Bank of Mexico Governor Guillermo Ortiz, Perez Motta voiced his strong opposition to the usurious fees and interest rates charged by the banks to their clients and spurred Congress to recently approve a law to give the central bank more teeth to control and regulate fees and interest rates. Over the past few years, CFC has worked cooperatively with the Federal Trade Commission and the Department of Justice to become an effective anti-trust watchdog.

¶8. (SBU) COMMENT: Not all Mexicans support the CFC's work, and opposition to the bill has already begun. Critics say that given the current economic situation, now is not the time for such a law that goes after the growing sectors of the economy. Others suggest that the proposed legislation is not in accordance with international regulations, and the CFC is already too strong. These objections, largely from Mexico's electricity, oil, energy, telecommunications, cement, and other sectors dominated by single companies, will likely increase in September when debate intensifies over this next step in Mexico's anti-trust enforcement efforts. Nevertheless, the proposal is an important step in the right direction for the development and strengthening of the Mexican economy. END COMMENT.

BASSETT